**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT**

**JODHPUR.**

**JUDGMENT**

Poosa Ram vs. Madan Gopal

S.B.Civil Second Appeal No.267/2001 under Section 100 C.P.C. against the judgment and decree dated 31.7.2001 passed by the Addl.District Judge no.1 in Civil Appeal Decree No.74/1996.

Date of Judgment: May 13,2005.

**PRESENT**

**HON'BLE MR. PRAKASH TATIA,J**

Mr. R.R. Nagori, for the appellant.

Mr. S.C. Maloo, for the respondent-Caveator.

**BY THE COURT:**

**REPORTABLE**

Brief facts of the case are that the appellant-tenant took a premises on rent from respondent-land-lord plaintiff for which a rent deed was executed on 19.2.1978.

Adjoining shop to the shop in dispute was in possession of the another tenant of plaintiff who was Jasraj. After the death of Jasraj,his

widow Akhi Bai was facing a suit for eviction filed by the plaintiff and that suit was decreed by the trial court on 19.10.1987 against which an appeal was preferred by the tenant of that shop, which was dismissed by the High Court on 11.1.1988. The High Court granted one years time to the widow of Jasraj to vacate the premises on her furnishing undertaking for the delivery of possession to the landlord in terms of the order of the trial court dated 11.1.1988. But during this period of one year, Akhi Bai expired on 14.5.1988 upon which escheated proceedings were started on the application of Tehsildar, Jodhpur and that said adjoining shop no.2 was taken in possession of the State Government. In the escheated proceedings, ultimately, the respondent-plaintiff could obtain the possession of the shop on 27.2.1991 after end of the escheated litigation.

According to the respondent-plaintiff, during this period of 25.5.1988 to 27.2.1991, when the shop no.2 was in possession of the State Government and was sealed, the defendant and his son created a ventilator in the wall between the shop in dispute and adjoining shop no.2 and he put an iron grill for ventilation. The defendant-appellant also installed a furnace (Bhatti) and started preparation of “Namkin” by burning fire-wood in the shop in 'Bhatti'. It caused huge smoke and that smoke had only way to pass and that was through ventilator into the

adjoining shop no.2. That caused totally blackening of shop no.2 making it totally inhabitable and it made the shop for no use of any business. Therefore, according to the plaintiff-landlord, by this act, the defendant who took the shop in question only for trade, changed the user and started manufacturing “Namkin” and that change entitles the plaintiff to seek decree of eviction under sub-clause (d) of sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as “Act of 1950”) and materially altered the premises without the permission of the plaintiff-landlord and, therefore, the plaintiff is entitled for the decree of eviction on this ground under sub-clause (c) of sub-section (1) of Section 13 of the Act of 1950 and further the defendant-tenant created nuisance and, therefore, the plaintiff is entitled for decree of eviction of the tenant under sub-clause (d) of sub-section (1) of Section 13 of the Act of 1950.

In addition to above, according to the plaintiff-respondent, the defendant-appellant permitted his son to use the shop in question for illegal trade for which a raid was conducted by the police and illicit liquor was recovered from the premises and the appellant-defendant-tenant's son Om Prakash was arrested and a case No.88/90 under the Excise Act was registered against the appellant-tenant's son Om Prakash

and challan was also filed. Therefore, according to the plaintiff, the defendant-appellant-tenant incurred disqualification to remain in possession of the rented premises because of permitting illegal trade in the shop in dispute.

The defendant submitted his written statement and denied all the allegations and took a specific plea that the defendant-appellant took the premises on rent for running a hotel and from the day when he took the premises on rent, he is using the premises for the business of hotel. He further submitted that the furnace (Bhatti) was constructed immediately after taking on rent the premises and he is doing the hotel business in suit premises from beginning. The defendant further submitted that he did not create any hole in the wall as alleged by the plaintiff. For the allegation of illegal trade in the suit premises, the defendant submitted that a false case was registered against defendant's son and it was due to the conspiracy of the plaintiff.

The trial court framed four issues on the basis of the above pleadings. The plaintiff gave his own statement and produced one witness P.W.2 Bhanwar Lal, whereas the defendant himself appeared in the witness-box and produced one witness D.W. 2 Achalu Ram. The plaintiff produced rent deed, map of the shop, possession warrant of

shop no.2 and delivery of the possession of shop no.2 to the plaintiff and few photographs as well as the site inspection report.

The trial court after hearing both the parties, decided issue no.1 in favour of the plaintiff and held that the defendant-appellant is guilty for creating nuisance. The trial court, while deciding issue no.2, held that the defendant materially altered the premises by breaking the wall between the two shops. The trial court also held that the appellant-defendant-tenant permitted the premises to be used for illegal trade and on all above grounds, the appellant is liable for eviction from the suit shop. However, the trial court, while deciding issue no.3 held that installation of 'Bhatti' in the shop is only extension of work and is not change of user of the premises, therefore, decree for eviction cannot be granted on this ground.

The tenant-appellant preferred appeal against the judgment and decree of the trial court dated 13.10.1996. The appellate court, after upholding of the findings recorded by the court below on all issues, dismissed the appeal of the defendant-tenant-appellant. Hence this second appeal against the judgments and decrees of the courts below.

Following substantial questions of laws were framed by this Court on 10.11.2003 while admitting this second appeal :-

> "(1) Whether the finding recorded by two courts below on issue No.4 is based on no evidence?
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> (2) Whether the finding recorded in issue NO.1 can be allowed to stand in view of the rinding given by the two courts below on issue No.3 ?
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> (3) Whether the finding recorded by the two courts below on issue NO.2 about the material alteration is contrary to law laid down by the Hon'ble Supreme Court in the case reported in AIR 1987 SC 617 and the judgment delivered in the case reported in 1992(1) WLC 590 and S.B.Civil Second Appeal No. 23/1982, LR.s of Balkrishna vs. Mohan Singh decided on 1.5.2003?
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> (4) Whether in case any act is done by the tenant within the premises resulting into nuisance in another premises of the landlord, can it be ground for eviction against the tenant under the provisions of sub-clause (d) of sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 ?
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> (5) Whether the courts below did not consider the material evidence of the defendant while deciding issue nO.1 and, therefore, finding recorded by the trial court vitiates ?

According to the learned counsel for the appellant-tenant, both the courts below committed serious error of law, rather both the courts below failed to appreciate the facts of the case and real controversy

and according to the learned counsel for the appellant-tenant, both the courts below while deciding issue no.3 held that the appellant has not changed the user and, therefore, is doing the work consistent with the purpose for which the shop in dispute was taken on rent by the tenant-defendant-appellant and when the appellant-tenant is using the premises consistent with the purpose for which the shop was taken on rent then, the appellant-tenant cannot be blamed for creating nuisance. According to the learned counsel for the appellant-tenant, if the appellant would not have used the premises for the purpose for which it was taken on rent, he would have been held liable for eviction on the ground of not using the premises for the purpose for which it was taken on rent. Learned counsel for the appellant vehemently submitted that in view of the language used in sub-clause (d) of sub-section (1) of Section 13, a tenant can be held liable only when the nuisance is created within the premises itself and cannot be held liable for eviction if the tenant created any nuisance in any other property of the landlord. For that purpose, the learned counsel for the appellant heavily relied upon the word “therein” used in clause (d) of sub-section (1) of Section 13. The learned counsel for the appellant further submitted that the language used in the Rajasthan Act is different than the language used in the Rent Control Acts in force in other States. According to the learned counsel for the appellant-tenant, since there is allegation that by the act or

omission of the appellant-defendant-tenant, the adjoining shop of the plaintiff became black by the smoke which emanated in the rented premises. It is clear that there is no allegation of creating nuisance within the rented premises. According to the learned counsel for the appellant-tenant, the landlord at the most, is a neighbour in the shop adjoining to the rented premises and, therefore, he stands in the capacity of a neighbour only. The neighbour has a right to seek relief of injunction against any nuisance if created by his neighbour. It was also submitted that it is incidental that the landlord is neighbour and if there was nuisance in adjoining property, the other neighbour could not have filed the suit for eviction against the tenant in occupation and on the basis of same analogy, the landlord had only remedy to file the suit for injunction seeking the relief of stoppage of nuisance in his other premises which in the present case is in occupation of the landlord himself as neighbour of the defendant-tenant. The landlord in such situation cannot be put on a higher possession than the neighbour.

The learned counsel for the appellant also tried to assail the finding of fact recorded by the trial court by submitting that the courts below wrongly relied upon the commissioner's report as the court should not have appointed the commissioner to collect the evidence for the plaintiff and for that purpose learned counsel for the appellant-tenant

relied upon the judgment of this Court delivered in the case of Union of India vs. M/s Kripal Industries ( 1988 (2) RLW 773). The learned counsel for the appellant further relied upon the commentary on subject "Nuisance" in the book -Rent Control Law in Rajasthan, by Mr. S.K. Dutt, published by Unique Traders, Jaipur, 3rd Edition (1999), wherein the subject of nuisance has been dealt with by the author on the basis of various judgments and the learned counsel for the appellant relied upon a book by Mr. R.C. Kochatta as well as judgment of the Hon'ble Supreme Court delivered in the case of Kuldeep Singh vs.Subhash Chander(AIR SCW 1130).

The learned counsel for the appellant also assailed the finding of the two courts below recorded on issue of material alteration in the suit premises by saying that the fact alleged itself does not constitute any material alteration in view of the law laid down by the Hon'ble Supreme Court in the judgment reported in Om Prakash vs. Amar Singh( AIR 1987 SC 617) and the judgments of this Court delivered in the case of Smt. Supyar Bai vs. Smt. Gordhan Bai(1992(1) WLC Raj. 590),Deep Chand vs. Abdul Hussain (1986 RLR 544) and the judgment of this Court delivered in the case LRs. of Balkishan vs. Mohan Singh(S.B. Civil Second Appeal NO.23/1989 decided on 1.5.2003).

According to the learned counsel for the appellant, the finding on issue No.4, the allegation about the illegal trade in the shop in dispute, is based on no evidence inasmuch as that the plaintiff failed to produce any evidence in support of his allegations. The plaintiff did not produce the FSL report for the Articles alleged to have been seized in the criminal case launched against the appellant-tenant's son Om Prakash, therefore, there is no proof available on record that the articles seized was liquor or any commodity of which trade was prohibited by law. Not only this but the plaintiff did not produce any police officer to prove the seizure memo. There is no direct evidence on issue from any of the witnesses who were the witnesses in criminal cases. According to the learned counsel for the appellant, the defendant-tenant's son was acquitted by the charge of commission of said offence. Therefore, there is a finding of fact in favour of the appellant's son by the court in criminal case and that fact of acquittal can be taken into consideration while deciding the issue whether appellant's son was doing the illicit business in the shop or not. It is also submitted that the courts below did not consider the material evidence of the defendant while deciding issue no.1 and, therefore, finding recorded by the trial court on issue no.1 vitiates.

The learned counsel for the respondent-landlord-plaintiff

submitted that no substantial question of law is involved in this appeal. It is also submitted that even if the court has framed the substantial question of law, the court can re-examine the matter and can again held that no substantial question of law is involved in this appeal. According to the learned counsel for the respondent-landlord-plaintiff, the material alteration, illegal trade and nuisance are pure question of fact and there are concurrent findings of fact against the appellant and in view of the settled legal position, this Court should not interfere in the finding of facts recorded by the two courts below even if there is possibility of taking a different view than the view taken by the courts belows. Not only this but even if this Court finds error of fact or even error of law, even then that cannot be interfered looking to the limited scope under Section 100 C.P.C.

On merits, the learned counsel for the respondent-landlord-plaintiff submitted that so far as making an opening of ventilator in the rented shop and shop no.2 is concerned, that has been proved by the plaintiff by positive evidence. The shop no. 2 became totally black because of the smoke created in the rented premises, which has also been proved by the cogent and positive evidence and this finding has not vitiated for any reason, rather this fact cannot be denied by the defendant-tenant that the shop no.2 became totally black and that

could have been only because of the indiscriminate use of the fire-wood by the tenant-defendant and there is no way otherwise. The premises was never used before in this manner because shop no.2 was in occupation of another tenant who was doing business and he would not have allowed the passing of the smoke in his rented shop It is also submitted that the language used in sub-clause (d) of sub-section (1) of Section 13 of the Act of 1950 is clear in itself. The clause (d) of sub-section (1) of Section 13 consists of more than one grounds on the basis of which the decree for eviction can be passed against the defendant, which are namely,

> (i) the tenant has created a nuisance,
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> or
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> (ii) the tenant has done any act which is inconsistent with the purpose for which he was admitted to tenancy of the premises,
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> or
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> (iii) had done any act which is likely to affect adversely and substantially the landlords' interest therein.(interest in premises)

According to the learned counsel for the respondent-landlord-plaintiff the word “therein” used in the last line of sub-clause (d) of sub-section (1) of Section 13 is related to the act or omissions of the tenant and which adversely and substantially affects the landlord's interest in the premises. It is also submitted that the words “the tenant created a nuisance”, are required to be given wide interpretation.

Therefore, if the tenant created nuisance, either within the rented premises or outside the rented premises, then he cannot have licence to continue in the premises and right to continue nuisance.

The learned counsel for the respondent-landlord-plaintiff further vehemently submitted that the issues were decided by the two courts below on the basis of the evidence produced in the court itself and the findings of the courts below on issue of illegal trade by defendant's son is based on uncontroverted and unrebutted evidence of the plaintiff who has not been cross-examined by the defendant despite several opportunities granted to the defendant and the findings are also based upon the adverse inference drawn against the defendant for not producing the best witness, his own son Om Prakash against whom admittedly a criminal case for illegal trade in the shop was registered. The acquittal in criminal case is absolutely irrelevant, as the civil court has ample jurisdiction to take a different view even after acquittal of an accused from the charge for commission of the offence. According to the learned counsel for the respondent-landlord, once the defendant did not choose to cross-examine the plaintiff on his statement about the activity of illegal trade in the shop then the court is required to presume that the defendant admits the statement of the witness-the plaintiff in this case.

According to the learned counsel for the respondent, material alteration depends upon facts of each case. It is true that normally material alternation may be the alteration in the frontage or of such nature which may result into alteration in the market value of the property itself but if a persons commits alteration which is not visible from outside or will not change the frontage of the premises but if tenant damages the landlord's other premises also for more beneficial use of his rented premises or tenant creates or gets some more benefits for the rented premises by allowing use of the adjoining premises of the landlord by removing wall or any portion of the landlord's property or common wall etc. then that is an act substantially against the interest of the landlord which is a ground in sub-clause (d) of sub-section (1) of Section 13 of the Act of 1950, otherwise the tenant will get the freedom to remove a temporary wall or a wooden structure separating the landlord's premises from the rented premises without there being any consequential liability of eviction of the tenant on the ground that that change has not materially altered the premises or the alteration is not visible from outside or it is not of permanent character. The examples given in various judgments about material alterations are not the exhaustive list. The learned counsel for the respondent also vehemently submitted that issue no.1 has been decided by the courts below by

considering all the evidence available on record.

I considered the submissions of the learned counsel for the parties.

The substantial question no.1 is whether the finding recorded by the two courts below is based on no evidence. For this, there is oral evidence of the plaintiff himself with specific allegation that the defendant's son was doing the business of illicit liquor in the shop in dispute and for that a criminal case was launched against the defendant's son Om Prakash. The defendant in his written statement, admitted that a criminal case was registered against his son Om Prakash as alleged by the plaintiff. The plaintiff stated on oath that the liquor was recovered from the premises. The plaintiff has not been cross-examined and, therefore, there appears to be no reason for not believing the statement of the plaintiff. More so, the defendant-tenant for the reason best known to him, did not produce his own son as his witness who could have rebutted the allegations levelled against him. When the defendant did not cross-examine and did not produce his best witness which he could have produced, then the trial court was just and right in drawing adverse inference against the defendant. It is true there may be more evidence to prove a question of fact but that does

not mean that the plaintiff is under obligation to produce all evidence even when he feels that he will be able to prove the question of fact on the basis of the evidence which he has produced. The court can draw adverse inference for not producing of the evidence only when there are reasons for doing so. It is also settled law that even if a party had more evidence which he could have produced but produced some evidence which is sufficient for proving a fact, it is not necessary for the court to draw adverse inference by ignoring the evidence available on record.

Here in this case, the evidence to rebut allegation of illegal trade was more readily available with the defendant or at least defendant's own son rather than with the plaintiff. To rebut oral statement of the plaintiff which substantially shifted the onus upon the defendant, the defendant could have produced at least his own son in the witness-box, apart from the fact that he himself could have summoned the FSL report from the court where the trial of the offence was concluded in favour of the defendant's son to show that the statement of the plaintiff is factually wrong and report given by the FSL, favours the stand of the defendant that that was not a liquor. The plaintiff had knowledge about the fact which is based on information received by the plaintiff from none else than the defendant's own son Om Prakash who, according to the plaintiff himself told the plaintiff when the defendant's son Om Prakash met with the plaintiff in court on 19.3.1991. This statement of

the plaintiff is un-crossed by the defendant and unrebutted by the plaintiff's son Om Prakash. Therefore, I do not find any merit in the submission of the learned counsel for the appellant that issue no.4 has been decided by the courts below without there being any evidence on record, rather this Court affirm the finding recorded by the two courts below on issue no.4. Therefore, substantial question of law no.1 is decided against the appellant.

Substantial questions no.2,4 and 5 are that whether the finding recorded on issue no. 1 can be allowed to stand in view of the finding given by the two courts below on issue no.3, whether in case any act is done by the tenant within the premises resulting into nuisance in another premises of the landlord, can it be ground for eviction against the provisions of sub-clause (d) of sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction ) Act, 1950 and whether the courts below did not consider the material evidence of the defendant while deciding issue no.1. Issue no.3 is whether the defendant by putting a 'Bhatti' started using the premises for a different purpose other than for which it was let out to the defendant. The finding has been recorded in favour of the defendant-appellant by both the courts below and it has been held that by putting 'Bhatti' in the shop, the defendant has not changed the use of the premises in question

whereas in issue no.1 both the courts below held that the defendant created nuisance by putting 'Bhatti' and generated nuisance smoke in the rented shop which passed into adjoining shop no.2 resulting into total blackening of the adjoining shop no.2 of the plaintiff.

The learned counsel for the appellant submitted that when plaintiff took the premises for use of his hotel business and his act of putting 'Bhatti' in the shop is consistent to the business of the defendant-tenant then the natural consequence of doing the business for which premises was taken cannot be termed to be nuisance at all. The learned counsel for the appellant in addition to above also submitted that if a premises is taken on rent for running a factory, the landlord cannot, after letting out the premises for the industrial purpose, can say that because of running a factory, nuisance is created. It is submitted that the landlord let out the premises knowing it well that what will its natural consequences.

The above argument has no application to the facts of this case. Installation of 'Bhatti' is extension of the use of the business of the defendant-tenant and may be permissible but that does not give the tenant a right to act in such a manner which he is not supposed to act. If he does any act or omission without taking the due care of preventing

the result (nuisance), which he could have avoided by taking the reasonable care as a prudent man, then he is guilty of creating actionable nuisance even in those cases where tenant is using the premises for the same purpose for which it was let out to him. The defendant, if had right to install 'Bhatti' in the shop, he could have done it only after making proper arrangements of discharge of the smoke from the shop but he had no right to pass on the black smoke in the landlord's other property making it total black, inhabitable and leaving it of no use. Therefore, the finding on issue no.3 in favour of defendant cannot save the defendant from penalty of eviction for creating nuisance for the landlord. The facts which have been found proved and cannot be disputed in second appeal clearly reveal that the defendant has created the nuisance for the landlord and that is attributed to total positive act of the defendant of putting 'Bhatti' and burning of fire-wood within the premises and by that, creating the black smoke within the premises and permitted it to pass in the adjoining shop of the landlord which he could have avoided by taking reasonable care. The permissible use of the premises to the tenant is not a licence to the tenant to not to take reasonable care in using the premises for which it was let out.

It appears that apprehending this position, an argument has been advanced that the nuisance has not been created “within the premises”

and since the word “therein” has been used in sub-clause (d) of sub-section (1) of Section 13 of the Act of 1950, therefore, no decree for eviction can be passed against the defendant-tenant and the courts below have committed illegality in interpreting the sub-clause (d) of sub-section (1) of Section 13.

The argument advance is having no merit. The section is required to be read with object for which it has been enacted. “Nuisance” is well defined word in the light of the various judgments and I need not to refer those earlier judgments because of the reason that this Court in S.B.Civil Second Appeal No.211/2002 Prem Raj vs. Mahendra Singh decided on 15.11.2002, considered the word “Nuisance” in detail and after considering the definition of the word “Nuisance” as quoted in the text books referred by the learned counsel for the appellant-tenant and after considering the judgments of the Hon'ble Supreme Court delivered in the case of Rafat Ali v. Sugni Bai & ors ( 1999) 1 SCC 133, the judgments of this Court delivered in the case of Kanhaiya Lal vs. Hari Singh (AIR 1996 Raj. 182), Durga Prasad vs. State of Raj. (AIR 1962 Raj. 92), Kalyan Sahai vs. Smt. Narani Bai ( 1987(2) RLR 499) and other judgments. In addition to above, in Prem Raj's case (supra), this Court held that :-

> "to constitute nuisance, there have to be serious acts and conduct on the part of the tenant, which adversely affects the landlord or occupiers of the building in the neighbourhood so that nuisance can be inferred against the tenant. A sort of continuous and frequent nuisance committed by the tenant is tenable which has to infer from the convenience or comfort of other persons living in the neighbourhood."

In the case of Kalyan Sahai (supra), this Court held that the act which causes pain to the owner of the property, which may amount to creating nuisance. The nuisance must be frequent and persistent. It must be one which creates hindrances or for which it is not possible for the neighbour to lead normal life peacefully. In the case of Prem Kumar (supra), allegation against the tenant was that the mosquotes are developing because of the dirty water in front of the shop and that dirty water is because of the blockage of drainage by the act of the tenant. This Court in above judgment held that the scope of the provisions of Section 13(1)(d) of the Act, 1950 is very wide , therefore, this provisions itself is to be read not in the context of private nuisance, but if the evidence is there that the interest of the landlord is substantially and adversely affected, the tenant is liable to be evicted and it is not necessary to prove that all of them should be co-existent. Therefore, the language used in sub-clause (d) of sub-section (1) of Section 13 that "the tenant has created nuisance" cannot be read to mean that the

tenant shall be liable to be evicted only when the nuisance is created within the premises because of the use of word “therein” in the last of sub-clause (d) of sub-section (1) of Section 13. The word “therein” has been used with reference and context of landlord's interest within the premises which is likely to affect adversely and substantially by the act or omission of the tenant which is clear from the fact that the word “therein” will become inconsistent with the second ground of eviction in sub-clause (d) which provides “had done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the premises”.The word “therein” will be superfluous word if it is to be read with this sub-clause (d) of sub-section (1) of Section 13.

Otherwise also there is no reasonable logic for holding that a tenant can be liable to be evicted only in case he creates nuisance within the premises giving the tenant the free licence to act against his own landlord to the extent of creating nuisance which itself gives an actionable cause even to his neighbour. The neighbour or persons residing within or in nearby the building where the rented premises is situated and if nuisance is created by the tenant, the neighbour can file suit for injunction against the said tenant for getting the relief of stoppage of nuisance and that relief only can be claimed by the adjoining neighbour because of the simple reason that he cannot claim

relief of possession or eviction of the tenant as he has no right, title or interest in the property nor he can interfere in the contract of the landlord and the tenant. The landlord may be neighbour of his own tenant and may not be neighbour but if tenant creates nuisances while he is occupying the premises only because he is tenant then the landlord by his relation as of landlord with tenant of the premises shall always be on higher footings as compared to other neighbour of the tenant.

Even if the landlord let out the premises to the tenant for a particular purpose and which is not a nuisance for the landlord himself or the landlord is not feeling that use a nuisance still the neighbour has right to seek relief of injunction against creation of the nuisance in the premises by the tenant. The neighbour has nothing to do with the contract between such landlord and tenant. This placed the neighbour in an entirely different position than the position of landlord.

The landlord has more rights because of the landlord's position as owner of the property and because of contract with his tenant. In addition to his position as owner of the property and contractual obligation of tenant for not creating nuisance or not acting against the interest of the landlord affecting landlord's right in the premises, by sub-clause (d) of sub-section (1) of Section 13, made that right a

statutory right of the landlord for seeking decree for eviction on tenant's creating nuisance. Such right is not available to the other neighbour. The right of seeking eviction decree against the tenant is in addition to landlord's right to seek relief of injunction against his own tenant from preventing him from creating nuisance and the right to landlord to seek injunction is not in derogation nor it can take away right of the landlord from seeking decree of eviction against the tenant. Therefore, I do not find any force in the submission of the learned counsel for the appellant that the landlord could have sought relief of injunction only against creation of nuisance and decree for eviction could not have been passed by the two courts below on the allegation of nuisance. In view of the above, the courts below committed no error of fact or law in deciding issue no.1 against the defendant even after deciding issue no.3 in favour of the defendant-tenant.

The learned counsel for the appellant feebly tried to press substantial question no.5 but could not point out which material evidence of the defendant was not considered by the two courts below. This Court is also after going through the entire facts of the case, is not inclined to hold that the courts below have committed any error of fact or law in passing the decree of eviction against the defendant on the grounds as mentioned above or the decree is not supported by any

reason. There may be some deficiency in writing a judgment and which may be because of the reason that when there exists sufficient and cogent reasons for deciding the issues by the courts and some time, the court overwhelmed by reasons,may not very specifically and very meticulously narrate evidence or statements of the witnesses and that itself cannot be a ground for interference with the finding of fact recorded by the two courts below based on evidence. Therefore, I do not find any merit in the submission of the learned counsel for the appellant that the courts below have committed error of law and not considered the material evidence of the defendant-tenant while deciding issue no.1.

In view of the above reasons, substantial questions no.3,4 and 5 are also decided against the appellant-defendant-tenant.

Consequently, the appeal of the appellant is dismissed. However, the appellant is granted time to vacate the premises on or before 31.12.2005 on the condition that the appellant shall furnish a written undertaking before the trial court that he shall vacate the premises on or before 31.12.2005 and shall pay or deposit the entire arrears of rent if due within a period of one month from today and shall further pay the rent for the premises by 15$^{th}$ day of each month as required under

Section 13(3) and (4) of the Act of 1950 and shall not hand over possession or shall not sub-let the property to any other person during this period.

( **PRAKASH TATIA ),J.**

**mlt.**